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ABSTRACT

Data collected from the National Electronic Injury Surveillance System (NEISS) and 26 tort liability cases are examined as a basis for recommendations for gymnastics instructors, supervisors, and administrators. Tables supply supportive statistics for a discussion of gymnastics injuries classified by sex, body part injured, severity, and circumstances of injury. Elements used in bringing a suit based on negligence are reviewed: instruction, equipment, supervision, and administration. Trial procedures, defenses against negligence, and characteristics of plaintiffs and defendants in the cases are compared and discussed. Brief outlines of the cases and their outcomes are followed by a conclusion in which recommendations for gymnastics participants (students and instructors) are suggested. A glossary of legal terms is appended. (FG)

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Gymnastics Safety and The Law

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INTRODUCTION

Each year, there is an increase in tort liability cases involving gymnastic teachers, coaches, supervisors, and administrators. Individuals involved with gymnastics need to have a better understanding of what constitutes a safe environment for participants and alleviate dangerous practices. This does not mean to imply that teachers and coaches become lawyers familiar with each legal case, but it is important that teachers, coaches, and administrators have a general overall understanding of current legal concepts.

The purpose of this study is to research the type and severity of injuries to those individuals participating in gymnastics nationally and to research tort liability cases involving gymnastics. Data were collected from the National Electronic Injury Surveillance System (NEISS) to establish the age, sex, diagnosis of injury, body part, disposition, locale/type, and severity of injuries to people participating in gymnastics. NEISS bases its information on a probability sample which includes 5,939 hospitals in the United States and its territories. Charts were developed from this information to show the number of cases reported from hospitals in the NEISS sample and a national estimate of emergency department-treated cases.

Twenty-six tort liability cases involving gymnastics, a majority of such cases that have gone to court in this specific area, were researched, analyzed, and reviewed. The information obtained from these cases candidly display facts relevant to both the plaintiff and defendant. Both the types of negligence and defenses to negligence are reviewed in each case. The conclusion includes recommendations for the gymnastic instructor, supervisor, and administrator.

INJURY REPORT

The NEISS has valuable information concerning gymnastic related injuries. Data that is obtained from the emergency department records of participating hospitals is coded and transmitted daily to the Consumer Product Safety Commission Office located in Washington, D. C.. NEISS bases its' information on a probability sample which included 5,939 hospitals in the United States and its territories. The following charts show the CTS Sample Count (number of cases reported from hospitals in the NEISS Sample) and the WTS Weighted Count (national estimate of emergency department-treated cases).

In 1975 a comment by the committee on the medical aspects of sports of the American Medical Association and the National Federation was written entitled Safety in Gymnastics. Their comment on injuries was similar, in many respects, to the findings of the NEISS report used in this paper and analyzed for the year 1979-80. The report stated:

Gymnastics demands a tremendous athlete, whether male or female. Despite the spectacular nature of the sport, relatively few serious injuries occur. The types of injuries that do occur are varied. The most frequent nuisance injury is blisters to the hands. Injuries of the upper extremities are common. Some of these are: finger sprains, especially from vaulting, and sprains of the wrist from falling backward on an outstretched hand. Sprains or dislocations are typical injuries resulting from exercising on the horizontal bar and rings. Partial ruptures of the pectoralis (chest), deltoid (shoulder), and serratus anterior (lower chest) muscles also occur on the rings and horizontal bar, and partial tears of the biceps on the parallel bars.

Of the few serious mishaps that do occur in gymnastics most involve head and neck injury, usually due to falling on the head and neck during a giant swing, a wrongly executed somersault, or maneuver on the trampoline.

Injuries to the lower extremities center on ankle sprains from landing incorrectly after a dismount. Knee injuries are infrequent. The quadriceps often suffers bruises from the contusion of the thigh with the balance beam, parallel or uneven parallel bars. The execution of the splits can result in a pull of the hamstrings. The lower abdomen sometimes sustains blunt force through impact with the bar.(16:1)

For the purpose of this summary, the figures used will only be concerned with the national estimate of emergency department treatments associated with gymnastics. Females accounted for 62.50% of the injuries. This seems to be a significantly higher percentage for the female gender, but speculation suggests that the number of female gymnastic participants certainly outweigh their male counterparts. Therefore, the percentage of injuries to males and females is probably proportional.

Ages 10-14 accounted for 49.43% of the gymnastic injuries. In public schools this would be a school grade of 5-10. The next age group that showed a tendency for injury was from age 15-19. This includes grades 10-14, or past high school years.

The NEISS report suggests that 88.17% of all patients reporting gymnastic injuries are treated and released or examined and released without treatment. This does suggest that most common gymnastic injuries are not severe. Furthermore, 7.7% were treated and transferred for further treatment, but not hospitalized. Only 3.29% of the patients were hospitalized.

col According to an article written in the International Gymnast Technical Supplement (No. 6) May, 1981, in 1978-79 no women and 7 men had catastrophic gymnastic injuries in the U.S.A.. In 1979-80, 2 men and 2 women had catastrophic injuries in this nation. Catastrophic injuries include all permanent neurological injuries to the spinal cord or cerebral column that are fatal and non-fatal. This information was collected by the National Gymnastic Catastrophic Injury Registry.

Most of the injuries were diagnosed as strains or sprains (39.18%). This may be contributed to the torque applied to the ankle joint upon impact from dismounts as the 1975 medical comment suggests. Contusions and abrasions account for 29.39% of the injuries diagnosed. Many of these injuries could be the result of hitting or landing on apparatus, or from falling off apparatus.

The two body parts most injured were the fingers and the ankles. Both of these body parts accounted for approximately 11% of the injuries to a specific body part. This again agrees with the 1975 medical comment. It is also interesting to note that except for the pubic region, upper leg, and upper arm, where injuries were almost non-existent, injuries occurred to all body parts some proportionately.

DATA COLLECTED FROM THE NATIONAL
ELECTRONIC INJURY SURVEILLANCE SYSTEM

Gymnastics Injuries 1980

Age	CTS*	%	WTS*	%
10-14	430	48.53	30260	49.43
15-19	254	28.66	17731	28.96
5-9	122	13.76	7917	12.93
20-24	32	3.61	2015	3.29
25-34	23	2.59	1567	2.56
2-4	14	1.58	901	1.47
45-54	6	.67	472	.77
35-44	4	.45	302	.49
55-64	1	.11	45	.07

*CTS: Sample count (number of cases reported from hospitals in the NEISS Sample)

WTS: Weighted count (national estimate of emergency department-treated cases associated with the designated product or group of products)

Sex	CTS*	%	WTS*	%
Female	555	62.50	39024	63.59
Male	333	37.50	22343	36.40

DIAGNOSIS	CTS*	%	WTS*	%
Strain or sprain	348	39.18	25261	41.24
Contusion/abrasion	261	29.39	17086	27.89
Fracture	167	18.80	11291	18.43
Laceration	62	6.98	3933	6.42
Dislocation	21	2.36	1515	2.47
Concussion	13	1.46	1031	1.68
Hematoma	7	.78	433	.70
Other	4	.45	408	.66
Crushing	2	.22	200	.32
Avulsion	1	.11	54	.08
Foreign body	1	.11	38	.06
Dermatitis	1	.11	1	.00

* CTS: Sample count (number of cases reported from hospitals in the NEISS Sample)

WTS: Weighted count (national estimate of emergency department-treated cases associated with the designated product or group of products)

DISPOSITION**	CTS*	%	WTS*	%
T & R	785	88.40	54112	88.17
T&T/Noth	62	6.98	4733	7.71
Hosp	30	3.37	2020	3.29
Unknown	9	1.01	309	.50
T&T/Hosp	2	.22	193	.31

* CTS: Sample count (number of cases reported from hospitals in the NEISS Sample)

WTS: Weighted count (National estimate of emergency department-treated cases associated with the designated product or group of products)

** DISPOSITION:

T & R: Treated and released or examined and released without treatment.
Hosp: Admitted for hospitalization.
T&T/Noth: Treated and transferred for further treatment but not hospitalized.
Unknown: Disposition unknown.
T&T/Hosp: Treated and transferred for hospitalization.

BODY PART	CTS*	%	WTS*	%
Ankle	103	11.59	7092	11.55
Finger	99	11.14	6786	11.05
Knee	69	7.77	4799	7.82
Wrist	70	7.88	4710	7.67
Foot	64	7.20	4526	7.37
Elbow	58	6.53	3952	6.43
Lower trunk	48	5.40	3563	5.80
Upper trunk	45	5.06	3237	5.27
Lower arm	44	4.95	3167	5.16
Head	47	5.29	3061	4.98
Face	46	5.18	3049	4.96
Toe	36	4.05	2872	4.67
Neck	36	4.05	2369	3.86
Hand	35	3.94	2295	3.73
Shoulder	36	4.05	2279	3.66
Lower leg	22	2.47	1705	2.77
Mouth	14	1.57	934	1.52
Upper leg	7	.78	398	.64
Pubic region	5	.56	332	.54
Upper Arm	4	.04	272	.44

* CTS: Sample count (number of cases reported from hospitals in the NEISS Sample)

WTS: Weighted count (national estimate of emergency department-treated cases associated with the designated product or group of products)

LOCALE/TYPE	CTS*	%	WTS*	%
School	593	66.77	41715	67.27
Sports Area	119	13.40	8474	13.80
Unknown	92	10.36	5629	9.17
Home	74	8.33	4865	7.92
Public Property	7	.78	415	.67
Apt. or Condo.	2	.22	156	.25
Street	1	.11	114	.18

* CTS: Sample count (number of cases reported from hospitals in the NEISS Sample)

WTS: Weighted count (national estimate of emergency department-treated cases associated with the designated product or group of products)

SEVERITY**	CTS*	%	WTS*	%
1	295	33.33	21495	35.02
3	265	29.84	17624	28.71
2	206	23.19	13725	22.36
4	82	9.23	5547	9.03
5	27	3.04	1833	2.98
6	8	.90	734	1.19

* CTS: Sample count (number of cases reported from hospital in the NEISS Sample)

WTS: Weighted count (national estimate of emergency department-treated cases associated with the designated product or group of products)

**SEVERITY:

- 1: Mild injuries to small areas (sprained foot), etc.
- 2: Contusion to lower trunk, dislocated arm, hand puncture, non-hospitalized poisoning, etc.
- 3: Arm fracture, sprained neck, etc.
- 4: Finger crushing, head laceration, punctured eye, etc.
- 5: Concussion, fractured neck, ingested foreign object, etc.
- 6: Amputation, anoxia, arm crushing, hospitalized poisoning, etc.

THE FOUR BASIC ELEMENTS OF NEGLIGENCE

Negligence is a concept that is difficult to define unless it is defined in regards to total circumstances of the act. The most significant liabilities arising from negligence are bodily injuries and property damage.(2) The outcome of this type of case will vary according to how the facts and circumstances of the case are combined.

Generally, persons will be held liable when they have not ensured the safety of the students entrusted to them. Not only must an individual explain rules to students/participants, but enforce them with all actions being reasonable and prudent. Dangerous conditions present in activities should be eliminated or any foreseen dangerous conditions in activities must be curtailed.(6) A good rule is the following: "Negligence exists where the activity or conduct on the part of the teacher creates an unreasonable chance of danger. When the teacher ignores the danger, or does not see the danger when he should, he may be held negligent if someone is injured as a result."(6:52)

A school and the staff of a school owe students the duty of care which is required to save them from foreseeable harm.(4) The presence of negligence and the historical development of the law of negligence has resulted in the development of a group of elements necessary to the successful maintenance of a suit based on negligence.(8) These elements are as follows:

- (1) Duty to conform to a standard of behavior which will not subject others to an unreasonable risk of injury.
- (2) Breach of that duty - failure to exercise due care.
- (3) A sufficiently close causal connection between the conduct or behavior and the resulting injury.

- (4) Damage or injury resulting to the rights or interests of another. (8:8)

An analysis of the major elements concerned with negligence reveals that the law is not based only on carelessness. Ignorance, forgetfulness, or stupidity may be involved in a negligence case. However, negligence may be found when people take careful consideration of the consequences of intended acts and act with what they believe to be sound judgement, but that judgement does not accord with the judgement of a reasonable prudent person. (8)

"The element of duty in a negligence action is an obligation which the courts will recognize and enforce when the relationship between the plaintiff and defendant is such that unless the defendant uses reasonable care, his conduct will expose this plaintiff to an unreasonable risk of injury."

(8:10)

The second element of a negligence case involves breach of duty. A defendant's conduct is measured against a legal standard of the reasonable prudent person. This reasonable prudent person is what the jury makes him up to be. Therefore, the standard is usually the ideal citizen of the community. This also implies that doing a particular act one time may be negligent, but on another occasion the act may be thought to be quite proper. In cases of this sort, the jury judges whether the conduct of the defendant exposed the plaintiff to an unreasonable risk of harm. (8)

Allowances are not made for mental or temperament differences. If a person is not qualified to teach in a specific field then that person should not attempt to do so. If, for example, an individual were teaching

a gymnastic class and was not qualified to meet a standard of care then the person should not be teaching gymnastics. Not only could the gymnastics teacher in this case be held liable, but also the administration for assigning an unqualified teacher to a certain teaching assignment.(8)

One major factor that the courts look at is the age of the child involved in the case. Most courts have divided children into the following groups by age:

- (a) Between 1 and 7 years of age there is no capacity for negligence.
- (b) Between 7 and 14 years of age there can be a prima facie case of incapacity; but it can be rebutted.
- (c) Between 14 and 21 the child is presumed to be capable of being negligent; but presumption could be rebutted.(8:11)

Some courts use another method. This group of courts looks into the child's experience, background, capacity (intelligence), and age to decide if the child could be negligent. This consideration of the deficiencies of experience given to a child is not given to an adult.(8)

A teacher involved in a liability case is measured by the usual tort standard of conduct. This is simply stated, but often difficult to apply. If a teacher fails to act or fails to refrain then he or she has breached the legal duty owed to the students. One example of this would be if a teacher fails to foresee a danger. If a child is allowed to use a bat without a knobbed end and the bat flies out of the hands of a child and hits another, the teacher is at fault. Furthermore, teachers are expected to protect children against themselves, their childishness, and irresponsibility.(8)

Another element of a negligence action is "causation". Causation is governed by equities, public policy, and precedent and can usually

be divided into legal cause and cause in fact. The factual relationship between the defendant's conduct and the plaintiff's loss is cause in fact. The jury under instruction from the court attempts to determine if the defendant's conduct was the cause of the plaintiff's loss or injury. The courts use a "but for" test to determine this. The test simply states if the injury would not have resulted "but for" the defendant's negligence then the defendant is negligent. However, if the injury would have occurred without the defendant's act or omission then the defendant is not guilty.(8)

Legal cause is the limitation the courts have put upon the defendant's responsibility for his conduct. The question to be answered is what extent was the defendant liable for his negligence. One approach to limit liability is to have some overriding public utility as may be the case of a principal that allows a physical education class to have a running race in the parking lot of their school and a reckless driver hits a student. The principal's part in this case was too remote a causal relation to the collision to be held liable.(9)

Another approach to determine cause in law is to determine if the cause was direct or indirect. "The Majority Rule is that if the intervening force is foreseeable, then the defendant is liable for all the consequences, regardless of the number of subsequent events in the causal chain. Another view holds that if the injury is produced by indirect causation, the defendant is liable only if he ought to have foreseen the injury in the light of the attending circumstances."(8:16)

The last element of negligence is that there be damage or injury. This does not need to be physical or monetary loss only. Lawsuits can

be acted on for some types of slander and libel. A negligence act is not complete without proof of negligence.(8)

If circumstances show that there is injury and the negligent act occurred because of the defendant, the doctrine of res ipsa loquitur may apply. This doctrine warrants an inference of negligence and puts the burden of going ahead with the evidence on the defendant. For this doctrine to apply, there are three conditions that must be met:

- (a) The occurrence must be one that ordinarily does not happen without negligence;
- (b) The instrumentality must have been in the exclusive control of the defendant at the time of the accident;
- (c) and the injury must have occurred without any voluntary action or contributing conduct on the part of the plaintiff.
(8:17)

States have been protected for years by the doctrine of sovereign immunity. This doctrine simply means that it need not assume liability for negligent acts of its employees unless choosing to do so. North Caroline, like many states, has waived sovereign immunity in certain instances. In the Tort Claims Act. Article 31, Chapter 143 of the General Statutes of North Carolina, the state accepts liability up to a maximum of \$30,000 for injuries caused by negligent acts of its employees when these workers are engaged in the course of their normal duties.

The State will not admit liability for damages of more than \$30,000. Neither will the State admit liability for negligence due to omission rather than commission, or where the act was outside the customary scope of the teacher's activities. Due to this, many times the injured individuals will direct their litigation directly against the allegedly negligent employee in a civil lawsuit. If the teacher was not outside

his or her scope and course of employment in relationship to the litigation, then the Attorney General is authorized to defend that employee of the State. Also, the State may pay up to \$30,000 of any monetary judgement against an employee found to be negligent. These arrangements are not totally satisfactory and sometimes students wrongfully assume that the State will take financial responsibility for their injuries.

The twenty six cases in this study were reviewed and analyzed in an effort to determine what negligence is in gymnastics. Based on the allegations made in this study, the following is the finding.

TYPES OF NEGLIGENCE

<u>Instruction</u>	<u>Case #</u>
Teacher never demonstrated or had someone demonstrate skill	1,15
Spotters were not instructed in correct method of spotting	1,7
Teacher was not in a position to view student	1,3
Exercise was not suitable for the age, ability, and experience of participant	2,22
Teacher did not consider the physical and mental ability of the students in requiring activity (individual differences)	2,3,13
Teacher did not consider prior injury of student in class the day she was reinjured	2
Teacher did not keep a daily log	3
Teacher did not follow the State Physical Education syllabus	1
Teacher did not have the appropriate number of spotters (trampoline)	7
Teacher did not properly instruct participants (inadequate instruction)	8,9,15,16,18
Failure of teacher to warn participants of inherent dangers	2,3,8,14,22
Teacher did not ask or know the experience level of the participant	13
Teacher ignored confusion among students	3
Teacher did not have adequate experience	3
Spotters were not used	16,17
Teacher refused to heed students protestations	22,23
Teacher was negligent in attending injury	23
Willful and wanton misconduct in connection with the instruction and/or supervision of class	9,13,17
Teacher did not use proper skill progressions	14
Teacher did not have any preliminary testing of strength of students	13
Teacher used improper spotting technique	14
Teacher physically forced and ordered student to perform a skill	9

EquipmentCase #

Teacher should have foreseen that mats or (apparatus) equipment were set up in a dangerous manner	4,5
Proper number of and effective use of safety padding (mats) were not surrounding the piece of equipment	7
Failure of teacher to fix defective piece of equipment	11
Failure of teacher to supervise the storing of equipment	10
Teacher positioned equipment poorly for student	15,17
Teacher allowed a newly arrived shipment of equipment to remain unfastened and in a dangerous place	19

Supervision

Teacher or supervisor did not properly supervise participant	7,8,10,15,16,18,21,22,23
Student was allowed to participate in improper attire	18
Failure of teacher to provide proper supervision by not first determining the proficiency of the invitee before allowing participation	12
The number of students was too large a number to supervise properly	18
No trained supervisory personnel on duty	8

Administration

School board (Board of Education) responsible for action of employee's teaching a required course	1,2
Administrator (principal) did not properly develop, administer, or supervise the physical education curriculum	14
Administrator (principal) poorly handled the transition of a teaching assignment between two teachers	14
Negligent in not supervising the activity of a new teacher	14
School district did not check to see if the teacher, who was not an employee of the school district, instructing gymnastics, was allowing children without written permission from their parents to participate	25
Administrator (Principal) was responsible for the overly large class size	3
Administrator (Superintendent) did not require Physical Education instructors to take professional trampoline training	3

Administration (continued)

Case #

Administrator (Superintendent) failed to provide new spotting equipment

3

Administrator (Superintendent) failed to recommend that all participants in advanced trampoline classes be in top physical condition

3

TRIAL

Both federal and state jurisdictions have procedures called Rules of Civil Procedure, which must be followed. These procedures are very specific and often times technical in nature.(5)

The first step in a lawsuit is begun by the plaintiff filing a pleading called a complaint. The complaint sets down the facts which the plaintiff alleges gave rise to his or her injury. The defendant is entitled to get notice of the lawsuit and have an opportunity to respond. This responsive pleading or rebut of the allegations is called an answer. The defendant may make counterclaims in the answer.(5)

A discovery period follows once the pleadings are filed from both the defendant and plaintiff. The purpose of this period is to discover facts pertaining to the case. The defendant is asked to be physically present with attorneys for both parties. At that time, all the statements the defendant makes are copied down by a court official. These facts may be used later for or against the defendant if the case goes to court.

Once the discovery is over, a summary judgement may be given by the judge. This judgement may only be given if the facts of the case are not in dispute and it is a matter of deciding which law is relevant to this particular case. If the judge were to make a summary judgement the case would not go to trial or consequently have a jury.(5)

If the case does go to court, the lawyers for both the plaintiff and defendant draft a trial brief to state their client's legal position as favorably as they can to the judge. A jury of twelve are chosen which are to be disinterested and impartial people. Once the jurors are selected and the trial begins, the lawyer for each side will have an

opening statement. After the opening statement and the plaintiff has had a chance to present his case, the judge can grant a direct verdict if one party is clearly entitled to a verdict. If a direct verdict is given, the jury decides according to the facts presented. Before the jury convenes to decide on the verdict, each party is allowed to make a closing statement. The verdict is then delivered after deliberation and a verdict given. The losing party then has the right to appeal the judgement to an appellate court.(5)

DEFENSES AGAINST NEGLIGENCE

The best defense in a negligence case is to prove that one of the four elements required for negligence is not present. Other defenses to a negligence case include contributory negligence, comparative negligence, assumption of risk, and an Act of God.(4)

Contributory negligence deals with conduct on the part of the plaintiff that does not conform to the standard required for his own protection and results in harm. If both parties are at fault, then the law requires that neither may recover damages. The plaintiff need only be slightly negligent in conduct for his age, physical capabilities, sex and training to be barred from recovering funds. An example of this can be seen in a case involving a high school boy who was asked by his teacher to climb a tree to pick apples and fell to the ground when a branch broke. The court believed the boy should have realized the danger and that this action contributed to the injury.(8)

Assumption of risk occurs when an individual assumes the responsibility for his own safety. This concept is based on the legal theory of volenti non fit injuria, which means no harm is done to one who consents. Physical education courses are required so courts are reluctant to uphold this defense. However, in an elective program, this defense may be applicable. In athletics, where participation is voluntary, this defense is often used. Thus, players and spectators assume the normal risks when involved in playing or watching an athletic event, although they do not accept the risks of an unsafe field, apparatus, or equipment.() However, essential in this doctrine of assumption of risk is that the plaintiff has knowledge of the risks. If the person does not realize the conditions and dangers,

then he does not assume the risk. If the plaintiff does not take reasonable precautions to determine the hazards involved in an action that is taken then the court may find the plaintiff to be guilty of contributory negligence.(5)

Sometimes the fault for a given circumstance is prorated. Comparative negligence occurs when the guilt is prorated because it is impossible for the plaintiff to get a favorable verdict. Not all states allow comparative negligence, but many have gone to this because they are concerned that an injured party cannot recover damages because that party was negligent to some degree.(4)

Another defense is immunity. This defense comes from the common law that "the king can do no wrong".(8:20) The "king" represents the state or political subdivision in this instance. Therefore, if a statute or judicial decision is not to the contrary, school districts and their officers are not liable for injuries caused by negligent performance within their legal duties. This act is not as strong today. In 1959, the Supreme Court of Illinois rendered the doctrine as a "dead duck in the state".(8:20) However, in 1963, the Colorado Supreme Court stated "it is not within the province of the judicial brance of the government to change long established principles of law: this is a function of the legislature".(8:20)

The jury decides if the defendant is negligent. This jury is composed of laymen and not teachers or professional educators. Therefore, it is the public which judges the defendant.

An Act of God is another defense often used. The Act of God is something that occurs which is beyond the ability of a person to control.

* An example of this is cited by Dr. Appenzeller when a golf game is being played on a sunny day and suddenly a bolt of lightning strikes someone. This injury was unforeseen and unexpected.(5)

The defenses of negligence used in the twenty six tort cases involving gymnastics were as follows:

DEFENSES OF NEGLIGENCE

<u>Instruction and Supervision</u>	<u>Case #</u>
Student had no objection to performing the move	1
Student had previously performed the move successfully before accident	1,17,23
Spotters were used during the performance of the move	1
Student received proper instruction	2
Student was taught using proper progressions	2
Student was not rushed or anxious when performing move	3
Curriculum guide was a guide for the teacher to follow and not something one would be obligated to follow	3
Student was not confused about instructions	3
Teacher was qualified to teach (certified)	1,3,14,23,25
Student had last clear chance to prevent injury	7
Students were injured after class	7,9
Participant was older and/or experienced	8,16,20
Instructions were clear and definite	8
There was no hidden danger to participant	8,11,26
There was a notice that participants would receive instruction if needed	8
Orientation period on all apparatus given (safety and precautionary measures advised)	15,16
Teacher gave demonstration of the skills to be attempted	16,23
Student demonstrated skill to others	13
Teacher told students to use spotters when attempting difficult or new skills that they were unsure of themselves	16
Safety instructions and use of spotters was understood	16
A "buddy system" (partners) of spotting was used	
Instructor should not be held to be more responsible than a parent or guardian (In loco Parentis)	13,17

	<u>Case #</u>
Oral instructions on the use of the apparatus were given	17
Each student was personally instructed on his or her vaults	17
Students were instructed on how to properly spot	13
There had been no previous injuries involving the equipment	17
Gymnastics room was used safely before accident	19
Student was warned of risks	23
A proper number and kind on mats were used for the activity	23
Contributory Negligence	2,7,10,11, 12,19,21
Assumption of Risk	7,8,12,20, 21,26

Administration

The Physical Education Department was responsible to the County Supervisor and not the principal	3
Governmental immunity	3
Discretionary immunity	14
Sovereign immunity	9
Respondent superior (School Board)	17
The Board of Education is not an insurer of student's safety and is not required to provide continuous supervision that it controls movements of all students at all times	18
Standard Due Care of School Board; no act of omission or commission	2

THE PLAINTIFF AND THE DEFENDANT

The plaintiff has been predominately at the beginning skill level. This may be true for several reasons. An older gymnast or one that has had more experience may be viewed by the courts to have assumed the risk when participating or to be found contributory negligent. Younger and/or less experienced gymnasts are not expected to be as capable of looking out for their own safety and therefore, many more of these cases would come to court without being dismissed by the judge with a summary judgement.

Most cases involve high school and junior high school age individuals. Gymnastics has been offered to and made more available to individuals at this age level than any other age group, which seems to explain why this has been the group that litigates the most. There are not as many opportunities for people to participate in gymnastics after high school and, therefore, they generally are not involved in liability cases. Those that do participate consistent throughout, are generally at a higher skill level and also less likely to be the subject of litigation.

The trampoline, rings, and vault were the three apparatus that were litigated the most. The number of trampoline litigations will probably not be as high in number as the future due to guidelines being made available to coaches/teachers concerning safety. These were written in a statement of the American Alliance for Physical Education, Recreation and Dance to be submitted to the American Academy of Pediatrics in 1978. This statement along with gymnastic equipment companies and the United States Gymnastic Safety Association's book on safety have all helped to lessen the problem. There are many states that do not allow the use of trampolines. Others that use the trampoline do so only with teachers supervising that have excellent background and are following the safety guidelines.

Vaulting and rings have also been litigated often. Both events are high off the ground and require a landing. It is also possible to slip from the rings, vaulting horse, or reuther board. Use of chalk is helpful in stopping, slipping, or sliding. Correct skill progressions and spotting are also helpful. Using vaulting as an example, the proper landing, block, and approach should be taught before the flight and repulsion

are introduced.

Tumbling accidents have been litigated several times. Courses in gymnastics almost always include and/or begin with tumbling. More people tumble or participate in floor exercises than any other single event. This is one reason for the number of cases litigated that deal with tumbling accidents. Tumbling requires movements done in all directions (forward, backward, sideward, upward, downward), in the inverted position, initiated on different body parts (hands, feet), and at various speeds and angles. Therefore, it is not surprising that injuries will occur in tumbling activities where a participant is learning about his body in space.

The defendant in a tort case in gymnastics is not just the physical education teacher. The physical education teacher simply, in many cases, does not have the proper amount of money or insurance to cover the expenses that are often required when a litigated case concerns a severe injury. School districts, school boards, supervisors, and administrators have also been litigated. They are also responsible and they have more money and insurance coverage.

LITIGATION
AGAINST PLAINTIFF

<u>LITIGATION AGAINST</u>	<u># OF CASES</u>	<u>CASE #</u>
City	2	4,16
Physical Education Teacher	11	1,3,9,10,14,15,16, 17,19,22,23
School District	10	1,2,10,13,14,19, 21,22,24,25
Principal	2	3,14
Superintendent	3	3,14,24
County	1	3
School Board (Board of Education)	6	3,4,5,9,17,18
Individual Board Members	1	3
University	3	6,7,15
Insurance Co.	2	6,9
State	1	7
Board of Regents	1	7
Trampoline Center Coperate Operation	2	8,12
Trampoline Amusement Center Owner	2	20,26
Physician	1	24
Supervisor	1	23

BACKGROUND DATA OF PLAINTIFF

APPARATUS INJURED ON	# OF CASES	CASE #	SEVERITY OF INJURY	CASE #
Floor Exercise (tumbling)	6	2,5,13,14, 22,25	Fractured Skull Floor Burns On Legs Subluxation Of The Neck (Posterior Cervical Jusion Required) Fractured Neck (Quadraplegic Paralysis) Personal Injuries Fractured Leg	2 5 13 14 22 25
Mini Trampoline	0			
Trampoline	7	3,7,8,9,12, 20,26,	Fractured Neck (Paraplegic) Severe Head And Shoulder Injury Personal Injuries Injured Teeth And Knee Fractured Jaw And Loss Of Teeth Personal Injuries (Buttock) Personal Injuries (Face)	3 7 8 9 12 20 26
Vault	4	11,15,17,23	Fractured Arm Personal Injuries Fractured Arm Fractured Arm	11 15 17 23
Unevens	0			
Beam	1	4	Personal Injuries	4
Parallel Bars	0			
Rings	3	1,16,24	"Landed On Her Back" "Substantial Injuries" Brain Damage	1 16 24
Horizontal Bars	1	21	Death	21
Pommel Horse	0			
OTHER				
Spring board	1	10	Personal Injuries (Head)	10
Slipped on floor (bare footed)	1	18	Injury To Arm	18
Stall bar not installed (fell)	1	19	Personal Injuries	19
Gymnastic Equipment	1	6	Paralyzed From The Neck Down	6

BACKGROUND DATA OF THE PLAINTIFF

SEX		EXPERIENCE			AGE LEVEL	# OF CASES	CASE #
Male	Female	Beg.	Int.	Adv.			
17	9	22	1	1	Over 21	2	8,20
					University	4	6,7,15,23
					High School	8	2,3,5,13, 15,17,23,24
					Junior High	7	9,10,11,12, 14,18,19
					Grade School	5	1,4,21,22,25
					Pre School	0	

BACKGROUND DATA OF THE DEFENDANT

Institution	# OF CASES	CASE #	Organization	# OF CASES	CASE #
Club	6		Supervised Play	5	8,12,20, 21,26
Public School	20	1,2,3,4, 5,6,7,9, 10,13,14, 15,16,17, 18,19,21, 22,23,24,25	Coached (Team) Class	1 19	6 1,2,3,4, 5,9,10, 11,13,14, 15,16,17, 18,19,22, 23,24,25
Trampoline Park	4	8,12,20,26			
Jewish Center	1	11	After Class	1	7
Federal Agent Using School	1	25			

Armlin v. Board of Education of Middleburg Central School District
36 App. Div. 2d 877, 320 N.Y.S. 2d 402 (1971).

The parents of Kathy Armlin brought action against her teacher and school district for injuries she received in a gymnastics class. Kathy, a fifth grade student, was injured on the rings when she attempted a dismount and landed on her back. Kathy had successfully tried this dismount before and seen others perform the move. She had two spotters, but they were not able to break her fall.

The plaintiff alleged that the teacher, Miss Mahoney; (1) never demonstrated any moves, (2) spotters were not instructed on how to perform, and (3) that Miss Mahoney was not in a position to view Kathy. Furthermore, there was proof that in the State Physical Education Syllabus under "Program of Activities", subdivision "Hanging Apparatus", there was a statement that "The apparatus and the class should be so placed as to be in view of the teacher."

The Supreme Court, Trial Term, entered a judgment in favor of the plaintiff. The defendants appealed. The Supreme Court of New York, Appellate Division affirmed the lower courts decision with costs.

CASE NUMBER: 1

Bellman v. San Francisco High School District
11 Cal. 2d 576, 81 P. 2d 894 (1938)

Ordell Cohen, Belva Bellman's guardian, brought action against the San Francisco High School District when Belva was injured in a high school tumbling class. Belva Bellman, a seventeen year old girl, fractured her skull when she attempted to complete a dive roll over two other students during a Physical Education class. Belva contended that she did not want to enroll in the course. She stated that because other Physical Education classes were full that she was instructed to take a tumbling class. Belva alleged that her teacher did not instruct her properly and that her teacher should have known she was not in a good enough physical or mental condition to attempt this skill. It was also stated that she had a bad knee.

The teacher stated that Belva was a healthy girl of the proper weight for her body type and size. Belva was said to have tried the skill she was injured attempting, "dive roll over two", over forty times before she was hurt. The teacher also maintained that Belva never complained to her about the "roll over two" being difficult or causing her pain in her knee. Also no school authority would verify Belva's allegation that she was required to take the course.

The plaintiff alleged that there was negligence on the part of the instructor because of the following factors: (1) the exercise was not suitable for the age, ability and experience of the participant; (2) the teacher did not consider prior injury of student in class the day of the accident; (3) and the teacher failed to supervise and instruct properly. The plaintiff alleged that the school board was responsible for the action

CASE NUMBER: 2

of their employee since the course was required. The defendants held that there was proper instruction. Progression in teaching skills was said to have been used. Further, it was maintained that there was no act of omission or commission on the part of the school board. Defendants claimed that the plaintiff was injured because of her own contributory negligence.

The Superior Court, City and County of San Francisco, by the verdict of a jury awarded damages in the sum of \$15,000 to the plaintiff. A judgment was entered in her favor, but the school district appealed both the judgement and the order by which it was derived a new trial. The Supreme Court of California reversed the decision and held that the plaintiff was given every presumption of truth in her evidence, yet, as a matter of law, no actionable negligence could be found. The decision was affirmed upon condition of remittitur, otherwise to stand reversed and remanded.

Berg v. Merricks
318 A 2d 220 (Md. 1976).

Parents of Michael Berg brought negligence actions against instructor, principal, superintendent, school board, county, and individual members of the board, for an injury he received in a Physical Education class. Michael, a high school senior, fractured his neck and is a paraplegic since he attempted a "back pullover" on the trampoline. The appellants stated that the instructor, Coach Merrick,

"(1) failed to watch Michael as he performed; (2) neglected to stand on the frame of the trampoline, level with the performer, ready to break his fall by hand; (3) failed to instruct students that they were to land on their stomachs, (4) ignored the confusion among the students; (5) failed to take account of individual abilities of his students, and (6) taught trampoline without adequate experience."

Coach Merrick was a physical education major who had graduated from the University of Maryland. He had proven his skills in both performing and teaching trampoline in the past. Furthermore, Coach Norman Holzalpfel, the Varsity Gymnastics Coach at the University of Iowa testified that Mike Berg's injury could not have been avoided even if Coach Merrick had been looking directly at Michael and been at the same level as he was when performing the move. The accident was not foreseeable because Michael apparently attempted a "back somersault" instead of the "back pullover". Coach Merrick had mentioned that the trampoline is a dangerous piece of apparatus. He did have a student demonstrate the move and did not rush

CASE NUMBER: 3

the students. There were a minimum of four spotters around each trampoline.

The principal was alleged by the plaintiff to be responsible for the large number of students in the class, which was thirty-eight. Neither the instructor nor the principal controlled the number of students in a physical education class. This was the responsibility of the county supervisor. Allegations were made that the superintendent was negligent for: (1) not requiring physical education instructors to take professional trampoline training; (2) failing to provide new spotting equipment at the high school; and (3) not recommending that all participants in advanced trampolining be in top physical condition.

The Circuit Court, Prince George's County, first heard the case. The court sustained objections raised by the county, the board of education, and individual board members that the charges were insufficient for the plaintiff to proceed upon or to oblige the defendant to answer. The superintendent's motion for summary judgment was granted as was a directed verdict against the principal and instructor. This case was appealed by the parents.

The Court of Special Appeals of Maryland, held the appeal. The instructor was found not to be negligent in his instruction and supervision. Since the Physical Education Department was responsible to the County Supervisor of Physical Education, the high school principal was not negligent. Both the county and board of education were immune from suit. The findings of this court, Court of Special Appeals of Maryland, were affirmed.

Bush v. City of Norwalk
122 Conn. 426 189 A. 608 (1937).

Richard Bush brought action against the City of Norwalk for injuries he received in a physical education class. Richard, an eight year old boy, was walking across a balance beam when it overturned, causing him to have injuries. The beam was purchased from one of the leading manufacturers of gymnastics equipment in the country. This type of beam was used as a standard piece of equipment in physical education classes through the city. The day of the injury, the children were participating in a regular physical education class and they were wearing ordinary shoes. There were no mats under the beam. Both the floor and top of the beam were alleged to be slippery. The complaint lodged by the plaintiff against the City of Norwalk maintained that the beam, because of its construction and use upon the slippery floor constituted a nuisance. The judges of the case concurred that there was no error.

Cambareri v. Board of Education of Albany
246 App. Div. 127, 284 N.Y.S. 892 (1936)
aff'd 283 N.Y. 741, 28 N.E. 2d 968 (1940)

Actions were brought by Anthony J. Cambareri and by Anthony Cambareri, his guardian, against the Board of Education of the City of Albany for personal injuries the infant received in a tumbling class. Anthony was a fourteen year old high school student. He injured himself when he fell to the floor after rising to his feet from a forward roll during a tumbling relay race with other members of his class. The plaintiffs contended that the injury was the result of the mat slipping because of the slippery condition of the floor. The mat was said not to have been firmly fixed.

The plaintiffs recovered judgements from the trial level. There was an appeal to the Appellate Division by the defendant. The Court of Appeals of New York reversed the judgements for plaintiffs and dismissed the complaints. Anthony Cambareri appealed, however the judgment was affirmed with costs and all concurred.

CASE NUMBER: 5

Cardamone v. U. of Pittsburgh
384 A 2d 1228 (Pa. 1978)

Thomas Cardamone filed a complaint in equity and an application for a mandatory preliminary injunction seeking to force the University to continue paying his medical costs for a gymnastics injury he received. Thomas was paralyzed from the neck down when he fell from gymnastics equipment which he was using as a member of the University of Pittsburgh Gymnastics Team. The injury occurred on October 19, 1972. On April 12, 1973, a "Letter Memorandum of Expression of Intention and Acknowledgement of Understanding" was written to the Cardamone family because of the enormous financial burden resulting from the accident. The University, in this memorandum, stated its intention to pay all medical bills incurred as a direct result of the accident "for all time or such period of time as the University may determine feasible." Thomas Cardamone's medical expenses were paid until the Fall of 1975, when the University announced its intention to cease payments.

The Cardamones then filed a complaint in equity and an application for a mandatory preliminary injunction that would compel the University to continue to defray medical costs. The Court of Common Pleas of Allegheny County, Civil Division, in Equity entered an order granting the plaintiff's application. The University appealed. The Superior Court, Pittsburgh District, held that the decree be vacated, meaning that after determining all questions raised by the case, there was nothing that required further judicial action.

CASE NUMBER: 6

The Court held that: (1) services rendered by student as a student athlete were neither rendered nor bargained for in exchange for university's promise to pay student's medical bills given fact that such services were rendered prior to execution of agreement in question; (2) university's promise to pay student's medical expenses was not given as consideration for student's forbearance in instituting suit for damages for agreement in question provided that it was not intended to influence or prevent any legal remedy otherwise available to student; (3) doctrine of promissory estoppel did not apply to university's promise, unsupported by consideration, to pay medical bills of student, inasmuch as the university had not made a promise that it should have reasonably expected to induce a definite action or forbearance on part of student.

Chapman V. State
492 P 2d 607 (Wash. App 1972)

David Chapman, a university student, brought action against state, state university and board of regents for injuries he suffered from a trampoline accident. David landed on his head and shoulders when he attempted a double forward somersault on the trampoline. The injury occurred after class. David had one spotter. When David attempted the double forward somersault, he lost his balance and fell off the trampoline onto the floor. The plaintiff claimed that Mr. Shaw: (1) failed to properly supervise, (2) did not have the proper number of spotters, (3) did not properly instruct the members of the class in proper safety spotting for those using trampoline, (4) did not provide proper safety padding on the floor area, and (5) failed to exercise that degree of care and caution in supervision that would be considered prudent. The instructor, John Shaw, was assisting another student on the horizontal bar at the time of the injury.

The Superior Court, Douglas County, entered judgment on a jury verdict for defendants. The plaintiff appealed the case. The Court of Appeals of Washington held that the student, rather than the instructor, had the last clear chance to avoid the accident, thus the doctrine of last clear chance did not apply.

The Court held that a defendant who sees a plaintiff's peril and should appreciate the danger but fails to exercise reasonable care to avoid injury is liable although plaintiff's negligence may continue to instant of injury, but it is essential that defendant actually see plaintiff's peril,

and that where university student who remained after gym class to work on trampoline was injured when he lost his balance and fell while attempting to perform double forward somersault at time when instructor was 30 to 40 feet away assisting another student, and injured student was not in position of peril until he went out of balance.

This judgment was affirmed.

Daniel v. S-Co. Corp.
225 Iowa 869, 124 N.W. 2d 522 (1963).

Ernest Daniel brought action against the corporate operator of a trampoline amusement center for injuries he received while participating on a trampoline. Ernest, a 35 year old college graduate, was injured when he fell off a trampoline at an amusement park. He claimed that the "Jumpin Gyminy Trampoline Center" was negligent for failing to warn the plaintiff of inherent dangers, failing to provide trained instructors to supervise and that the plaintiff should not have been permitted to participate without instruction. The defendant claimed that instructions were visible to all participants. There was a notice stating that everyone who desired instruction could ask for it. The defendant claimed that the plaintiff volunteered to participate and that the inherent danger was obvious to one reasonably concerned with his own safety. Ernest was thought to have taken an assumption of risk.

Scott District Court rendered a judgment for the plaintiff in the amount of \$6,500. The plaintiff appealed. The Supreme Court of Iowa reversed the decision because there were printed instructions along with a statement that instruction was available upon request, which warned the plaintiff of inherent dangers and involved no hidden danger.

CASE NUMBER: 8

District School Board of Lake County v. Talmadge
381 So. 2d 698 (Fla. 1980).

Robert Talmadge brought action against his physical education instructor, the school board, and its insurer for injuries sustained while performing on a trampoline in a physical education class. Robert alleges that his instructor, Mr. Walters, ordered him to perform a front somersault. Mr. Walters allegedly picked Robert up and placed him on the trampoline when he refused to attempt the move. Twice more Robert was ordered to attempt the move. Upon attempting the somersault, he injured his teeth and his knee. Robert alleges that he was not prepared for this move since he had had minimal instruction on the safety and technique of this move.

The Circuit Court, Lake County, dismissed the complaint against the instructor. The instructor, Sonny Walters, had filed a motion to dismiss himself as a defendant contending that subsection 768:28(9) immunized him from suit. The District Court of Appeal, reversed and remanded, and certiorari was brought. The court held that the statute "acts only to indemnify an employee of the State for a monetary judgment entered against him as a result of negligent acts occurring within the scope of his employment, but does not operate as a bar against suing such an employee as a party defendant." Walters and other petitioners challenged the district court's ruling on that point. The Supreme Court of Florida held that, "a school employee may be made party defendant in action for personal injuries allegedly occasioned by the employee's negligence while acting in the scope of his employment."

CASE NUMBER: 9

Grant v. Lake Oswego School District No. 7
15 Ore. App. 325, 515 P 2d 947 (1973)

Marian Grant, the mother of Carol Grant, brought action against the school district physical education teacher for personal injuries that occurred during a physical education class. Carol Grant, a seventh grade, twelve year old girl, was injured when she hit her head during a physical education class. The teacher of the class, Toni Burke, was giving instruction on the beam, tumbling and on the use of a springboard. Near the end of class the teacher instructed three students to put the springboard away and tip it on its side against the wall in the alcove where it was stored. The three girls left the springboard upright and pointed it toward the exercise room. Carol used the springboard and propelled her head into the beam above the door of the exercise room.

The plaintiff claimed that there was negligence involved in this case because: (1) the springboard should not have been placed under the doorway, (2) the springboard should have been placed on its side, (3) the students should have been warned of the dangers, and (4) proper supervision could have prevented the accident. The defendants claimed the student was contributively negligent.

The Circuit Court, Clackamas County, granted judgment notwithstanding the verdict. A motion was granted for a new trial. The plaintiff appealed. The Court of Appeals held that evidence warranted submission to the jury of several issues of the case which included: (1) whether the student was contributively negligent, (2) whether the school district and teacher were negligent in the springboard, (3) whether failure to turn the springboard

CASE NUMBER: 10

on its side made it harmful, (4) whether there was proper supervision provided, (5) whether the student had been warned of inherent danger, and (6) whether proper supervision could have prevented the accident.

The judgment was reversed and remanded with instructions.

Kanofsky v. Brooklyn Jewish Center
265 N.Y. 634, 193 N.E. 420 (1934)

Rose Kanofsky brought action for her daughter, Dorothy Kanofsky, against the Brooklyn Jewish Center for an injury that occurred while Dorothy was participating in a gymnastics class. Dorothy, a twelve year old, was invited by a gymnastics instructor to participate in some gymnastic activities with some other girls. Dorothy fractured her arm when she fell while attempting to vault over a buck horse.

There was an appeal from a judgment of the Appellate Division of the Supreme Court in the Second Judicial Department affirming a judgment in favor of the defendant entered upon a dismissal of the complaint, at the end of the plaintiff's case. This action was taken by a Trial Term in an action by the plaintiff for personal injuries that were alleged to have occurred due to the negligence of the defendant. The Court of Appeals of New York affirmed the judgment with costs. The defendant's motion to dismiss the complaint on the grounds that "no negligence on defendants part had been proved; that, if proved, it was not the proximate cause of the accident; that plaintiff was guilty of contributory negligence; and that plaintiff had assumed the risk of jumping, the danger being open and obvious."

CASE NUMBER: 11

Kungle v. Austin
380 S.W. 2d 354 (Mo. 1964)

Arthur Kungle brought action for his daughter, Sandra Kungle, against trampoline center operators for injuries she allegedly received from participation on a trampoline. Sandra fractured her jaw and lost several teeth when she was using a trampoline at a trampoline center. Sandra was attempting a knee drop when she landed incorrectly. She bounced forward contacting the trampoline after the pad on the side of the trampoline slid off. Sandra's face struck "the concrete, the back of the pipe."

Mrs. Ytell, a physical education instructor, was present at the trampoline center. Mrs. Ytell claimed she instructed Sandra on the use of the trampoline, but Sandra denied this. At the time of the accident, two fifteen year old friends were watching Sandra jump on the trampoline while Mrs. Ytell was nearby.

The plaintiff charged that pads attached around the perimeter of the trampoline were not attached properly, that there was improper supervision for an inexperienced person, and there was failure of the plaintiff to warn of inherent dangers. The defendants' defense was assumption of risk, contributory negligence and lack of negligence on the part of the defendants.

The Circuit Court of Jasper County, rendered judgment in favor of the operators. Sandra and her father appealed. The Supreme Court of Missouri, reversed and remanded the decision. The Court held that:

"Trampoline center operators conformance or failure to conform to established practices and customs of operation of that kind of business did not determine whether

operators were negligent and instruction that if operators operated the center the same as those centers were usually and customarily operated, operators were not negligent toward patron was reversibly erroneous."

Landers v. School District No. 203
O'Fallon, 66 Ill. App. 3d 78, 383 N.E. 2d 645 (1978)

Michelle Landers, who was injured while attempting a tumbling move in a physical education class, took action against the school district. Michelle, a senior high student, injured her neck while attempting a backward roll during a tumbling unit of her physical education class. Michelle was 5'6" tall and weighed 180 pounds. She feared attempting a backward roll and claims she had asked her teacher, Mary Ellen McElroy Metias to help her with this move the day before the injury and on the very day of the accident. Mrs. McElroy did not remember these conversations.

There were 40 students participating in Michelle's class. The instructor had a student demonstrate the correct technique of the backward roll. Students also were instructed on how to spot. McElroy gave the plaintiff no personal instruction or attention. When Michelle attempted the move she was unable to push her weight over with her arms when the hips were over the head. The neck injury she received was diagnosed as a subluxation. To correct this condition, a posterior cervical fusion was performed, which includes the grafting of a bone from the hip onto vertbrae of the neck.

Herman Biesterfeldt, an assistant coach at Southern Illinois University was asked to give his expert opinion concerning the facts of the case. He testified that a person that is overweight has more likelihood of damaging the body's connective tissue while performing. One's arm strength was also mentioned to be important to avoid injury in this move. Herman testified that most novices in gymnastics do not realize the tremendous pressure to the neck that takes place during the execution of the backward roll.

CASE NUMBER: 13

Therefore, the beginning gymnast must be instructed on the technical skills and dangers of the move. Fear from the student was also mentioned to present danger.

The Circuit Court, St. Clair County, entered a verdict in favor of the plaintiff. The school district appealed. The Appellate Court of Illinois affirmed the lower court's decision and held that the teacher's actions amounted to willful and wanton misconduct. This judgement was made based on the evidence that held that the physical education teacher was aware of dangers to the student when attempting a backward roll because of: (1) the student's fear of attempting the move, (2) the student's obesity, and (3) also, because the instructor knowing this, directed the student to practice the maneuver without personal supervision.

Percy and Phyllis Larson brought action against the superintendent of the school district, principal of the high school, and the physical education teacher for injuries their son, Steven Larson, received while participating in a gymnastics unit of an eighth grade physical education class. Steven fractured his neck when he attempted a "headspring over a rolled mat". This injury resulted in quadraplegic paralysis.

Mark Embretson was Steven's physical education teacher. On the day of the accident, Mr. Lundquist, a first year teacher with a teaching certificate in physical education, was the instructor of the class. Mr. Embretson's absence from class was due to his being required to report for military duty.

The plaintiff's claim was that proper progressions were not taught before attempting the headspring, and that the headspring was not being spotted correctly by Lundquist at the time of the injury. The Superintendent, Mr. Lamont, and the Principal, Mr. Peterson, were allegedly negligent for not properly developing, administering, and supervising the physical education curriculum. Their handling of the transition in teaching assignments from Embretson to Lundquist was thought not to be prudently handled. Finally, they never personally supervised the new instructor.

The Principal, Mr. Peterson, furnished Lundquist with a copy of a curriculum bulletin entitled, "A Guide for Instruction in Physical Education" which was published by the department of physical education. Peterson never met with both teachers to discuss their plans for the transition.

Lundquist was told to meet with Embretson to plan for his teaching assignment. The two teachers met for thirty minutes. During that meeting, details of the types of activities to be taught and methods to be used were not described or decided upon by either member.

The District Court, Isanti County, awarded judgment against the instructor and principal. The school district was found to be jointly and severly liable in certain sum. A directed verdict in favor of the superintendent was awarded.

The trial court awarded Steve, individually, judgment against Peterson and Lundquist, jointly and severly, in the sum of \$1,013,639.75 together with costs and disbursements and awarded Percy Larson \$142,937.89 together with his costs and disbursements. The trial court further held that procurement of liability insurance in the sum of \$50,000 by Independent School District No. 314 under Minn. St. 1971 waived the school district's absolute defense of governmental immunity of or torts committed by its employees to the extent of \$50,000 and that the school district was thereby jointly and severly liable with Peterson and Lundquist in the sum of \$50,000 to each plaintiff. The parties appealed and cross-appealed: The Supreme Court, held that: "(1) jury's finding that injury of student in physical education class was due in part to negligence of principal of school was not manifestly and palpably contrary to evidence as a whole; (2) superintendent was not sufficiently involved in actions or inactions to be found negligent; (3) judgment utilized by physical education

instructor in determining how to spot and teach an advanced gymnastic exercise was not decision making entitled to protection under doctrine of discretionary immunity and, therefore, instructor was liable for his negligent spotting and teaching of the exercise; (4) principal who abdicated his responsibility for developing and administering teaching of physical education curriculum was not engaged in decision making at planning level and, therefore, his liability for negligent discharge of the responsibility was not precluded by doctrine of discretionary immunity; and (5) principal was not entitled to indemnity from school district and his liability was not limited to amount of insurance coverage the school district was required to carry." Judgment was affirmed.

Lorenzo v. Monroe Community College
422 N.Y.S. 2d 230 (N.Y. 1979)

Anette Lorenzo brought action against Monroe Community College and her instructor, Sylvia Yeager, for injuries she suffered while attempting a vault in a gymnastics class. Anette fractured her arm when she attempted to do a straddle vault. This was her first attempt at the move. She watched another student perform the move and then attempted the vault while the teacher was in another part of the gymnasium.

There were thirty students in the class. The instructor, Mrs. Yeager, gave preliminary instruction on vaulting and other apparatus at the beginning of the unit, but the straddle vault was not demonstrated. Anette, being overweight, did not receive more instruction than other students, but she was not required to participate in this vault.

The Monroe Supreme Court granted a summary judgment in favor of the defendant instructor. The plaintiff appealed. The Supreme Court, Appellate Division, reversed the judgment. The court held that the instructor was not near enough to the student, at the time of the injury, to advise and assist her. The instructor had also not demonstrated to the class or to the plaintiff the correct technique of the move. These factors were sufficient to raise factual issue as to negligence and precluded summary judgment for defendant. The order and judgment were reversed and motion denied.

Lueck v. Janesville

57 Wis. 2d 254, 204 N.W. 2d 6 (1973).

Terry Lueck brought action against the City of Janesville and her teacher for injuries that she sustained performing a gymnastic exercise in a supervised physical education class. Terry was attempting a forward roll on the rings when he slipped and fell to the mat. The forward roll had been successfully attempted by Terry several times previous to the day he was injured. An orientation was given by his instructor on all the apparatus. Safety measures had been discussed and moves demonstrated by the teacher. Students were requested to use a buddy system of spotting. Students were also instructed to ask permission of Mr. Sorenson, the teacher, before trying new moves. The plaintiff claimed that Mr. Sorenson's negligence stemmed from his failure to properly instruct and supervise his students and failure to provide a spotter for the plaintiff.

The Circuit Court, Rock County, Ninth Judicial Circuit made a judgment in favor of the defendant. The plaintiff appealed. The Supreme Court of Wisconsin affirmed the lower court's decision in favor of the defendant. The court held that there was no evidence to support the plaintiff's allegation that the city or his teacher failed to use ordinary care in any of the following areas: (1) furnishing adequate equipment, (2) in the instruction, (3) in the supervision, (4) and in the assistance given to the student before and at the time of his fall and injury.

CASE NUMBER: 16

Rita Montague brought action against the instructor and school board for the fractured arm her son received in a high school physical education class while attempting a vault. Michael's injury was allegedly caused by the willful and wanton misconduct of his teacher, Mr. Daugherty. This allegation was based on the plaintiff's charge that the height of the horse was too high and there were not spotters.

Mr. Daugherty gave oral instructions to all pupils at the beginning of the course. Each of the students were personally instructed by him on each of the vaults. Michael had performed this vault at least 30 times successfully before the accident. Also the instructor warned all students before each class on the importance of safety while performing a vault.

The Circuit Court, Cook County, voted in favor of a summary judgment for the defendant. The plaintiff appealed. The Appellate Court of Illinois, McNamara, J. affirmed the decision. Even if there had been spotters and given that the horse was positioned too high, these factors would not constitute willful and wanton misconduct on the part of the instructor.

Stanley Passafaro, who was injured in a tumbling class, brought action against the school board. Stanley arrived at his class without sneakers. His teacher allegedly instructed him to take off his shoes and participate in his stockings. The activity Stanley was assigned to was tumbling. Upon receiving instructions concerning the activity, the plaintiff ran on the gymnasium floor towards a mat. Before he could reach the mat, Stanley slipped and fell on his arm. His instructor testified that the plaintiff was instructed to simply observe the activity from the side of the mat.

The Supreme Court, New York County, entered a judgment in favor of the plaintiff in the amount of \$50,000. The defendant appealed. The Supreme Court, Appellate Division, unanimously reversed the decision, on the law and vacated. A new trial is to be directed, without costs and without disbursements. The court held that the jury was instructed that recovery against school board could be predicated on either the theory of improper instruction or failure to provide sufficient supervision. Evidence could not support either of these allegations by the plaintiff. Therefore, the judgment was reversed and a new trial granted.

Quigley v. School District No. 45J3
251, Ore. 452, 446 P. 2d 177 (1968)

James Howard Quigley brought action for his son, Robert Duane Quigley, against the instructor and school district where Robert received injuries when a piece of apparatus fell on him during a physical education class. Robert, a twelve year old boy, received his injuries when stall bars fell on him. The stall bars were approximately nine feet high. The horizontal metal bars, known as stall bars, had been delivered the day before but had not been fastened to the wall. The plaintiff's charged that there was failure to supervise properly since the defendant knew that the stall bars constituted a dangerous situation and he didn't exercise reasonable care in alleviating the dangerous situation.

The Circuit Court, Lane County, entered a judgment on jury verdict in favor of the defendant. The plaintiff appealed. The Supreme Court of Oregon affirmed the lower court's decision. The court held that the teacher had instructed the students of the danger to them regarding the stall bars being unfastened and the room had been safe prior to the day of the accident.

CASE NUMBER: 19

Richard Ragni brought action against an outdoor trampoline company when he received injuries while participating on one of their trampolines. Richard, a twenty six year old man, landed on his buttocks on the steel spring of a trampoline when he was attempting a standard bounce. The trampoline park contained twenty-five trampolines. There were three to four supervisors on duty the day of the accident and seventy-five people were in attendance. A sign was posted in the park stating that customers could receive special instruction for a fee. Also, there was a loud-speaker system that the cashier could use to stop improper behavior from the public while participating on the trampolines. The plaintiff charged that the defendant did not warn him of certain inherent dangers in the equipment and that the defendant negligently and inadequately supervised him. The padding over the frame was claimed to give false security to the defendant because the padding was inadequate to prevent spinal injuries.

The Circuit Court, Cook County, directed the verdict in favor of the defendant. The plaintiff appealed. The Appellate Court of Illinois, affirmed the decision of the lower court. The trampoline park owner was found not to be negligent for not warning a 26 year old man, who had had prior trampoline experience, that the middle of the trampoline was the correct place to land and that landing on the padded frame was unsafe.

Rodrigues v. San Jose Unified School District
157 Cal. App. 2d 842, 322 P. 2d 70 (1958).

Action was brought by Julian and Maria Rodrigues against the school district for the death of their first grade son, Bobby. Bobby fell to the blacktopped playground surface from a horizontal bar which was part of the playground equipment. The accident occurred during a noon recess. Bobby was rushed to the hospital when he was found lying unconscious by the horizontal bar, but he died three and a half hours later.

The plaintiffs charged that Bobby should have been provided closer supervision. They also claimed that the teacher should have informed others concerning Bobby's medical condition. One teacher supervising seventy-five to one hundred children was also charged to be improper supervision. The defendants claimed contributory negligence and assumption of risk as part of their defense.

The Superior Court, Santa Clara County, after a jury verdict, entered a judgment for the school district. The parents appealed. The District Court of Appeal held, "that presumption that child was exercising ordinary care at time of and immediately preceding the accident did not require conclusion that child exercised due care in getting on the bar in view of evidence that child who was subject to seizures knew that he should not get on the bar, and that child's death was caused by injuries sustained in fall from bar." The lower courts decision was affirmed.

Rodriguez v. Seattle School District No. 1
66 Wash. 2d 51, 401 P. 2d 326 (1965).

Evelyn Rodriguez brought action on behalf of her daughter, Linda Rodriguez, against her teacher and school district for injuries she received while performing a tumbling exercise in a physical education class. Linda received an injury to her right leg when attempting the prescribed tumbling exercises of her teacher, Shig Tsutsumi. The plaintiff charged that the instructor had failed to exercise proper supervision because she did not heed Linda's protestations. The plaintiff also charged the teacher with failing to give proper instruction, since the instructor should have known that the child was not capable of performing the required moves.

The Superior Court, King County, granted summary judgment for defendants. The plaintiff appealed. The Superior Court of Washington held that statute precluding action against school district for any acts or omissions of district or its employees relating to athletic apparatus or appliance did not bar action for injuries sustained by student where claim for relief did not rest on alleged negligence in relation to tumbling mat, but on alleged negligence in requiring student to perform acts which defendants knew, or should have known, that she was incapable of performing safely. The judgment was reversed and the cause remanded.

Sayers v. Ranger
16 N. J. Super. 22, 83 A 2d 775(1951).

Joseph P. Sayer and his son William Srederick Sayers brought action against Alfred Ranger, a physical education instructor, and Albert Hedelt, a supervisor, for injuries to William that occurred when he attempted vaulting in a compulsory physical education class. William, a fourteen year old boy, fractured his arm when attempting to vault in a leapfrog position over another boy. The teacher, Mr. Ranger, was charged with failure to supervise by the plaintiff. The instructor was also charged with negligently attending to William's injury. This charge stemmed from the teacher having William walk to the office of the supervisor after he was injured.

The defendant's defense was that he demonstrated the correct technique of the skill, told William he didn't have to try the move if he didn't think he could do it properly and he placed proper mats to protect the students. The student had been warned of the risk and he had completed the skill successfully before. The child was claimed to have assumed the risk when he attempted the vault.

The Superior Court, Atlantic County, Law Division, entered a verdict in favor of plaintiff and awarded William \$1,000. The action was dismissed as to the defendant Hedelt. The defendant, Alfred Ranger, appealed. The Superior Court, Appellate Division, reversed the lower courts decision. The court held that the plaintiff had been told of the dangers and that he assumed the risk when he attempted the vault.

Staub v. Southwest Butler County School Dist.
398 A 2d 204 (Pa. Super. 1979).

After falling from the still rings in a physical education class and receiving brain damage, Diane Staub brought suit against her school district. The alleged negligence charged involved failure to provide proper equipment, instruction and supervision during the class. The School District joined the hospital and treating physicians as additional defendants. The additional defendants then filed objections asserting that original jurisdiction to hear malpractice claims against them was vested in arbitration panels for health care.

The Court of Common Pleas, Butler County, Civil Division - Law, at A. D., entered an order to transfer the case to administration panels for health care. Appeals were filed by the school districts and one of the physicians. The Superior Court of Pennsylvania, No. 500, held that the lower courts decision be reversed and remanded. The court held that the Court of Common Pleas had original jurisdiction to hear and decide case in its entirety.

Leonard Walter brought action against the school district for personal injuries that occurred in a tumbling class that was being taught by a federal employee in a public school building. Leonard fractured his leg while attempting a front somersault in a gymnastics class. The gymnastics class was being taught by Ben Perry, a federal employee, who was given authorization to teach tumbling after school hours in a public school. The boy was supposed to have had a waiver form signed by his parents before participating. Leonard did not have the permission of his parents to participate, yet he still participated without the instructor or school administration requiring he first have permission from his parents.

The jury found Ben Perry, the gymnastic instructor, to be negligent. The defendant appealed. The Superior Court of Washington, reversed the lower court decision.

Williams v. Lombardini
38 Misc. 2d 146, 238 N.Y.S. 2d 63 (1963).

Stuart Williams brought action against Adam Lombardini, who owned and rented the use of his trampoline to Stuart. Stuart was injured while attempting a front somersault. Stuart, a 19 year old male university student, landed on the framework of the trampoline at a combination ice cream stand and trampoline center. There was nothing defective in the trampoline. Stuart answered an affidavit which explained the rules for usage of the trampoline. The plaintiff believed that the risks were not open and obvious.

The defendants filed a motion for summary judgment to the Supreme Court, Special Term, Broome County. The motion was granted because the court maintained that a 19 year old university student assumed the risk when he used the trampoline. The danger was obvious to one reasonably mindful of his own safety.

CONCLUSION

Is gymnastics a "high risk" sport? Many individuals categorize gymnastics as a "high risk" sport because they believe that those who participate have a high likelihood of being injured and that many of these injuries are catastrophic in nature. However, research presented in this paper does not substantiate this belief. Most injuries, as evidenced in the study are not any more severe in nature or number than several of the current sports in modern day physical education curriculums and athletic programs. Furthermore, in the review of tort cases involving gymnastics, courts have shown that they realize that individuals involved with the instruction, supervision, and administration of gymnastics are functioning in a complex environment. The courts have shown that they realize there will be injuries to some individuals involved in a sport that has apparatus and requires physical activity. Their decisions reveal that they expect the participants will have a safe environment to perform in and that they are instructed in a prudent manner.

Teachers, coaches, and administrators involved with gymnastics need only to learn what the courts consider as prudent and act in a manner that illustrates the concept of the law. One factor that appears to be important is to require a health status report. A medical report can be obtained from a physician. The report should consider medical conditions that could potentially cause problems to participants. Physical handicaps, psychological handicaps, chronic ailments, and allergies are all medical conditions that may affect safe participation in gymnastics.

A medical report should be made a condition of participation. If a medical report is not feasible then the waiver form should have a space for the participant to explain any mental, physical, or emotional problems that may affect him with respect to participation in gymnastics. This information should be reviewed by the teacher/coach and any questions he has concerning the participant's health status should be understood and taken care of before activity begins. If a student is injured during gymnastic

activity, then an accident report should be written explaining relevant personal information concerning who was injured, how he was injured, and what part of the body was injured. These accident report forms should be retained for five years.

(Participants should, prior to joining a gymnastics team or gymnastics class, sign a safety waiver form.) The waiver does not protect a teacher or coach from litigation, but this action does show that proper procedures were followed. A waiver should state that gymnastics is a vigorous activity and contains certain elements of risk: any activity involving motion, rotation, or height may cause serious accidental injury. Enrollment in the class should be explained as an assumption of risk on the part of the participant.

Teachers and coaches need to have a good background in first aid. First aid supplies must be available to them. They should also have ready access to a phone and the phone numbers of hospitals and doctors that they may need in an emergency. Whenever possible, when a more severe injury occurs, the teacher/coach should allow the physician or athletic trainer administer the first aid. This is especially true in the case of head and neck injuries.

An orientation program for gymnastics participants is another helpful way of preparing everyone for the rigors of the sport. The orientation can include reviewing safety rules and guidelines and proper spotting techniques. This is an excellent time to demonstrate, discuss and practice the correct procedures for setting up and properly taking down and storing equipment. Also, proper skill progressions for each event should be reviewed. Whenever possible, video tapes, pictures, and/or demonstrations of the moves to be executed in future classes or practices should be made available to students.

Participants must be assessed to determine their ability and experience. Muscular strength and flexibility are two important components in both safety and success in the sport. Tests of strength and flexibility can be found in such magazines and periodicals as the International Gymnast, May '79, National Strength Coaches Association Journal, April-May '81, and the Journal of Physical Education, Recreation and Dance. Once a test

of this nature is administered and recorded, the teacher/coach can analyze the results and determine what exercises would be appropriate for the participant and then devise individual fitness programs.

Simple movements and combinations of movements (locomotor movements and simple gymnastic moves) can be devised and given to the beginning gymnast to demonstrate. Upon observation of these movements, and after analyzing the strength and flexibility test, various gymnastic activities can be assigned to participants. These precautions illustrate the teacher/coach has shown sound discretion and judgement in taking into account the individual differences of each participant.

The gymnastic room, or gymnasium used for gymnastics, needs to be a safe place for students to participate. Precautions should be taken to be sure that all extraneous materials be removed from the room. These materials include sharp metal pieces, volleyball standards, or any other fixture that could ultimately be harmful. A periodic check of equipment is essential. Once the equipment is checked, it is mandatory that any equipment found to be defective be fixed before further use. Records of these periodic equipment checks should be dated and filed.

When gymnastic equipment remains standing in the gymnasium, the gymnasium needs to be locked. In every day use of the gymnasium when equipment is setup or stored, the teacher or supervisor must be responsible for the safety of those individuals helping with this task. Furthermore, during activity the teacher/coach must be sure that the proper type and quantity of mats are used. The mats must not be overlapping and landing mats are to be used for dismounts.

Sometimes the State Department of Education or the School Board of a school system will have guidelines for the conduct of physical education classes and athletic programs to function under. Teachers/coaches need to be familiar and follow these guidelines when teaching and/or coaching. If the guidelines need to be changed, then do work to have them altered. Otherwise, do work according to the guidelines given to you.

There is not one method of teaching gymnastics. Each gymnastics teacher or coach has their own method of teaching skills. However, logical skill progressions must be

used. For example, one would certainly not instruct a child in tumbling on how to perform a front salto (aerial) before learning a forward roll.

Participants in gymnastics, especially at a young age with minimal experience in gymnastics, sometimes have difficulty understanding the concept or the skill teachers are attempting to teach. Oftentimes the demonstration of the skill by the teacher or a highly skilled student will enable the student to understand the technique of the skill. Tapes, books, or films of the move that can be analyzed will also help. Drills designed to enable the participant to conceptualize the skill or movement exploration approaches aimed at this purpose are oftentimes invaluable.

Instructions to students should be clear and definite so that the participants can understand what is expected of them. If there is a certain element of risk involved in the move, then an explanation of the risk and how the gymnast is to react to this risk may be needed. For instance, if a person is attempting a handstand for the first time, he may fall over backwards. This fall may injure the neck or back. Instructions on how to roll out of the handstand are necessary, as are words of caution concerning the risks to the neck, head, and back.

Students should not be rushed into an activity. If there is confusion or they appear rushed, time is needed to answer their questions or apprehensions. When and if a student protests to do a move, the teacher does not need to physically force the student to participate. The wise move on the part of the teacher is to provide the student with another option. This allows the students to continue to participate and the teacher to maintain respect and discipline. Also, it provides the time for the teacher to determine why the individual has hesitated to attempt a skill.

There are certain skills that need to be spotted the first time even with proper progressions being employed. A back tuck salto on the trampoline is an example. According to guidelines written by the American Association of Health, Physical Education, Recreation and Dance, this move should be taught in a spotting belt. It is important that students use the proper spotting techniques. Spotters should be employed when

necessary, such as when attempting moves on apparatus such as the rings, parallel bars, unevens, vault, and beam. Finally, on events like the trampoline, the correct numbers of spotters should be used.

Spotters should understand and use the proper spotting techniques.

Teachers and coaches should not leave the gymnasium when students are remaining. An accident could occur when they are absent. When emergencies occur, the teacher or coach should ask for assistance.

Administrators of gymnastic programs, whether they be private or public, are responsible for helping to formulate rules and seeing that they are enforced for the safe conduct of all participants. They are expected to hire qualified instructors and coaches. If a staff member is not well certified, the administrator is expected to give a degree of supervision, as would be expected in the transition of a new instructor. Also, administrators are not to subject a teacher/coach to a situation whereby the participant/teacher ratio is too high.

Both teacher and participants should have insurance. Protection in the event of negligence in order that both parties will be protected from financial loss. There are several individual and group health insurance plans for the participants to choose from. Coaches, teachers, and administrators have plans that help to cover them in case they are litigated. This coverage is sometimes offered and covered in the dues one pays to certain professional organizations.

Lastly, to better understand what constitutes prudent instruction, supervision, and administration of a gymnastic program a list of recommendations has been organized. These recommendations were gathered after analyzing a variety of court cases that have been heard in a court of law to determine what courts view as being prudent instruction in a safe and harmless environment. The following is the list of these recommendations:

RECOMMENDATIONS

<u>Instruction</u>	<u>Case #</u>
Take into account the age, ability, and experience of the participant before deciding what exercises to engage in	2,3,13,22
Use proper skill progressions	2,14
Do some preliminary testing of strength and flexibility of students	13
In giving instructions to students be sure that:	
(a) the instructions are clear and definite	3,8
(b) there is no hidden danger	8,11,26
(c) students are not rushed or anxious when performing	3
(d) you listen to students protestations	1,22,23
(e) you do not ignore confusion among students	
(f) warn students of inherent dangers	2,3,8,14,22,23
Do not physically force or order a student to perform a skill	9
Whenever possible give personal attention to students	17
Demonstrate or have someone demonstrate skills whenever possible	1,13,15,16,23
Teachers should be sure policies enforced during class are adhered to after class	7,9
Consider injuries of students	2
Keep an account of your activities	3
Understand and follow the guidelines of State or school System syllabuses whenever possible	1
Spotting:	
Spotters should be familiar with the correct method of spotting	1,7,13
There should be an appropriate number of spotters for certain events, such as trampoline	7
Use spotters when necessary	16,17
Students should understand safety instructions and the use of spotters	16
Teachers should use and understand proper spotting techniques	14
<u>Equipment</u>	
The proper number and kind of mat should be used for each activity	7,2,3
Fix any defective piece of equipment	11

Equipment (continued)

Teacher should supervise the storing of equipment	15,17
Do not leave equipment in a dangerous place	19

Supervision

Do not allow participants to participate in improper attire	18
Determine the level of proficiency of the invitee before allowing participation	12
Do not attempt to supervise more than a logical number of participants	18

Administration

Administrator should take action in developing, administering, and supervising the physical education curriculum	14
Administrator should handle the transition between teaching assignments, especially if the teacher is new	14
Use discretion in determining class size	3
Provide or help teachers to have an opportunity to take professional training	3
Provide current spotting equipment	3

GLOSSARY OF TERMS
As Defined By
Black's Law Dictionary

Act of God (Vis Major) - An act occasioned exclusively by violence of nature without the interference of any human agency. It means a natural necessity proceeding from physical causes alone without the intervention of man. It is an act, event, happening, or occurrence, due to natural causes and inevitable accident, or disaster, a natural and inevitable necessity which operates without interference or aid from man and which results from natural causes and is in no sense attributable to human agency. It is an accident which could not have been occasioned by human agency but proceeded from physical causes alone.

Assumption of Risk (Volenti non fit injuria) - The doctrine of assumption of risk, also known as *volenti non fit injuria*, means legally that a plaintiff may not recover for an injury to which he assents, i.e., that a person may not recover for an injury received when he voluntarily exposes himself to a known and appreciated danger. The requirements for the defense of *volenti non fit injuria* are that: (1) the plaintiff has knowledge of facts constituting a dangerous condition, (2) he knows the condition is dangerous, (3) he appreciates the nature or extent of the danger, and (4) he voluntarily exposes himself to the danger. An exception may be applicable even though the above factors have entered into a plaintiff's conduct if his actions come within the rescue or humanitarian doctrine. A defense to action of negligence which consists of showing that the plaintiff, knowing the dangers and risk involved, chose to act as he did. An affirmative defense which the defendant in a negligence action must plead and prove.

Attractive Nuisance Doctrine - The doctrine is that person who has an instrumentality, agency, or condition upon his own premises, or who creates such condition on the premises of another, or in a public place, which may reasonably be apprehended to be a source of danger to children, is under a duty to take such precautions as a reasonably prudent man would take to prevent injury to children of tender years whom he knows to be accustomed to resort there, or who may, by reason of something there which may be expected to attract them, come there to play.

Common Law - As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England. The "common law" is all the statutory and case law background of England and the American colonies before the American revolution. "Common law" consists of those principles, usage and rules of action applicable to government and security of persons and property which do not rest for their authority upon any express and positive declaration of the will of the legislature.

Comparative Negligence - Under comparative negligence statutes or doctrines, negligence is measured in terms of percentage, and any damages allowed shall be diminished in proportion to amount of negligence attributable to the person for whose injury, damage or death recovery is sought. Many states have replaced contributory negligence acts or doctrines with comparative negligence. Where negligence by both parties is concurrent and contributes to injury, recovery is not barred under such doctrine, but plaintiff's damages are diminished proportionately, provided his fault is less than defendant's, and that by exercise of ordinary care, he could not have avoided consequences of defendant's negligence after it was or should have been apparent.

Concurrent Negligence - Arises where the injury is proximately caused by the concurrent wrongful acts or omissions of two or more persons acting independently. See also Concurrent negligence.

Contributory Negligence - The act or omission amounting to want of ordinary care on part of complaining party, which, concurring with defendant's negligence, is proximate cause of injury. Conduct by a plaintiff which is below the standard to which he is legally required to conform for his own protection and which is a contributing cause which cooperates with the negligence of the defendant in causing the plaintiff's harm. Conduct for which plaintiff is responsible amounting to a breach of duty which law imposes on persons to protect themselves from injury, and which concurring and cooperating with actionable negligence for which defendant is responsible, contributes to injury complained of as a proximate cause.

Criminal Action - Proceeding by which person charged with a crime is brought to trial and either found not guilty or guilty and sentenced. An action, suit, or cause instituted to punish an infraction of the criminal laws.

Damages - A pecuniary compensation or indemnity, which may be recovered in the courts by any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another. A sum of money awarded to a person injured by the tort of another. Damages may be compensatory or punitive according to whether they are awarded as the measure of actual loss suffered or as punishment for outrageous conduct and to deter future transgressions. Nominal damages are awarded for the vindication of a right where no real loss or injury can be proved. Generally, punitive or exemplary damages are awarded only if compensatory or actual damages have been sustained. Compensatory or actual damages consist of both general and special damages. General damages are the natural, necessary, and usual result of the wrongful act or occurrence in question. Special damages are those "which are the natural, but not the necessary and inevitable result of the wrongful act."

Defendant - The person defending or denying; the party against whom relief or recovery is sought in an action or suit or the accused in a criminal case.

Foreseeability - The ability to see or know in advance; hence, the reasonable anticipation that harm or injury is a likely result of acts or omissions. "Foreseeability" element of proximate cause is established by proof that actor, as person or ordinary intelligence and prudence, should reasonably

(Foreseeability, continued) have anticipated danger to others created by his negligent act, whether by event which occurred or some similar event, without regard to what actor believed would occur or anticipation as to just how injuries would grow out of dangerous situation created by him. As necessary element of proximate cause means that wrongdoer is not responsible for consequence which is merely possible, but is responsible only for consequence which is probable according to ordinary and usual experience.

Governmental Functions - The functions of a municipality which are essential to its existence, in sense of serving public at large, and are to be distinguished from those which are private, which are not necessary to its existence, and which enure to advantage of its inhabitants. Activities which are carried on by city, pursuant to state requirement, in discharge of state's obligation for health, safety or general welfare of public generally, or which are voluntarily assumed by city for benefit of public generally rather than for its own citizens, are performed in governmental capacity and as "governmental function". Where duty involves general public benefit not in nature of corporate or business undertaking for corporate benefit and interest of municipality, function is "governmental," whether duty be directly imposed or voluntarily assumed. Those conferred upon municipality as local agency of prescribed and limited jurisdiction to be employed in administering the affairs of the state and promoting the public welfare generally.

Governmental Immunity - The federal, state and local governments are not amenable to actions in tort except in cases in which they have consented to be sued. The federal government under the Federal Tort Claims Act has waived its immunity in certain cases "in the same manner and to the same extent as a private individual under like circumstances." Most states have also waived governmental immunity to various degrees at both the state and municipal government levels.

Gross Negligence - The intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another. It is materially more want of care than constitutes simple inadvertence. It is an act or omission respecting legal duty of an aggravated character as distinguished from a mere failure to exercise ordinary care. It is very great negligence, or the absence of slight diligence, or the want of even scant care. It amounts to indifference to present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of legal duty respecting the rights of others. The element of culpability which characterizes all negligence is in gross negligence magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence. But it is something less than the wilful, wanton and reckless conduct which renders a defendant who has injured another liable to the latter even though guilty of contributory negligence, or which renders a defendant in rightful possession of real estate liable to a trespasser whom he has injured. It falls short of being such reckless disregard of probable consequences as is equivalent to a wilful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from wilful and intentional conduct

(Gross Negligence, continued) which is or ought to be known to have a tendency to injure. Gross negligence consists of conscious and voluntary act or omission which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor is aware. That entire want of care which would raise belief that act or omission complained of was result of conscious indifference to rights and welfare of persons affected by it. Indifference to present legal duty and utter forgetfulness of legal obligations, so far as other persons may be affected, and a manifestly smaller amount of watchfulness and circumspection than the circumstances require of a person of ordinary prudence.

Immunity - Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform; e.g. exemption from paying taxes. Freedom from duty or penalty. Special privilege.

Injunction - A prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law. A judicial process operating in personam, and requiring person to whom it is directed to do or refrain from doing a particular thing.

In Loco Parentis - In the place of a parent; instead of a parent; charged, factitiously, with a parent's rights, duties, and responsibilities.

Liability - The word is a broad legal term. It has been referred to as of the most comprehensive significance, including almost every character of hazard or responsibility, absolute, contingent, or likely. It has been defined to mean: all character of debts and obligations, amenability or responsibility; and obligation one is bound in law or justice to perform; an obligation which may or may not ripen into a debt; any kind of debt or liability, either absolute or contingent, express or implied; condition of being actually or potentially subject to an obligation; condition of being responsible for a possible or actual loss, penalty, evil, expense, or burden; condition which creates a duty to perform an act immediately or in the future; duty to pay money or perform some other service; duty which must at least eventually be performed; every kind of legal obligation, responsibility, or duty; fixed liability; legal responsibility; penalty for failure to pay tax when due; present, current, future, fixed or contingent debts; responsibility for torts; that which one is under obligation to pay, or for which one is liable; the state of being bound or obliged in law or justice to do, pay, or make good something; the state of one who is bound in law and justice to do something which may be enforced by action; unliquidated claim.

Malfeasance - Evil doing; ill conduct. The commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which person ought not to do at all or the unjust performance of some act which the party had no right or which he had contracted not to do. Comprehensive term including any wrongful conduct

(Malfeasance, continued) that affects, interrupts or interferes with the performance of official duties. Malfeasance is a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or the unjust performance of some act, which party performing it has no right, or has contracted not, to do. It differs from "misfeasance" and "non-feasance".

Misfeasance - The improper performance of some act which a man may lawfully do. "Nonfeasance" means the omission of an act which a person ought to do; "misfeasance" is the improper doing of an act which a person might lawfully do; and "malfeasance" is the doing of an act which a person ought not to do at all.

Negligence - The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances. Conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expectable of a reasonably prudent person under like circumstances. The term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary, or great. It is characterized chiefly by inadvertence, thoughtlessness, inattention, and the like, while "wantonness" or "recklessness" is characterized by willfulness. The law of negligence is founded on reasonable conduct or reasonable care under all circumstances of particular case. Doctrine of negligence rests on duty of every person to exercise due care in his conduct toward others from which injury may result.

Nonfeasance - Nonperformance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty. There is a distinction between "nonfeasance" and "misfeasance" or "malfeasance"; and this distinction is often of great importance in determining an agent's liability to third persons. "Nonfeasance" means the total omission or failure of an agent to enter upon the performance of some distinct duty or undertaking which he has agreed with his principal to do; "misfeasance" means the improper doing of an act which the agent might lawfully do, or, in other words, it is the performing of his duty to his principal in such a manner as to infringe upon the rights and privileges of third persons; and "malfeasance" is a doing of an act which he ought not to do at all.

Plaintiff - A person who brings an action; the party who complains or sues in a civil action and is so named on the record.* A person who seeks remedial relief for an injury to rights; it designates a complainant.

Precedent - An adjudged case or decision of a court, considered as furnishing an example or authority for an identical or similar case afterwards arising or a similar question of law. Courts attempt to decide cases on the basis of principles established in prior cases. Prior cases which are close in facts or legal principles to the case under consideration are called precedents. A rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases. A course of conduct once followed which may serve as a guide for future conduct.

Proprietary Functions - Functions which city, in its discretion, may perform when considered to be for best interests of citizens of city. Acts done by municipality for general betterment and improvement of such. Municipal corporations act in two distinct capacities: (1) governmental, legislative or public and (2) proprietary, commercial or quasi-private; the "governmental functions" of a municipal corporation are those functions exercised as arm of state, and for public good generally, whereas "proprietary functions" are those exercised for peculiar benefit and advantage of citizens of municipality.

Proximate Cause - That which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission. The last negligent act contributory to an injury, without which such injury would not have resulted. The dominant, moving or producing cause. The efficient cause; the one that necessarily sets the other causes in operation. The causes that are merely incidental or instruments of a superior or controlling agency are not the proximate causes and the responsible ones, though they may be nearer in time to the result. It is only when the causes are independent of each other that the nearest is, of course, to be charged with the disaster. Act or omission immediately causing or failing to prevent injury; act or omission occurring or concurring with another, which, had it not happened, injury would not have been inflicted.

Res Ipsa Loquitur - The thing speaks for itself. Rebuttable presumption or inference that defendant was negligent, which arises upon proof that instrumentality causing injury was in defendant's exclusive control, and that the accident was one which ordinarily does not happen in absence of negligence. Res ipsa loquitur is rule of evidence whereby negligence of alleged wrongdoer may be inferred from mere fact that accident happened provided character of accident and circumstances attending it lead reasonably to belief that in absence of negligence it would not have occurred and that thing which caused injury is shown to have been under

(Res ipsa loquitur, continued) management and control of alleged wrongdoer. Under doctrine of "res ipsa loquitur" the happening of an injury permits an inference of negligence where plaintiff produces substantial evidence that injury was caused by an agency or instrumentality under exclusive control and management of defendant, and that the occurrence was such that in the ordinary course of things would not happen if reasonable care had been used.

Respondeat Superior - Let the master answer. This maxim means that a master is liable in certain cases for the wrongful acts of his servant, and a principal for those of his agent. Under this doctrine master is responsible for want of care on servant's part toward those to whom master owes duty to use care, provided failure of servant to use such care occurred in course of his employment. Doctrine applies only when relation of master and servant existed between defendant and wrongdoer at time of injury sued for, in respect to very transaction from which it arose. Hence doctrine is inapplicable where injury occurs while servant is acting outside legitimate scope of authority. But if deviation be only slight or incidental, employer may still be liable.

Scope of Employment - Under doctrine of respondeat superior (q.v.), a principal is liable for the torts of his agent committed within the scope, actual or apparent, of his employment. An employee acts in scope of his employment, for purpose of invoking a doctrine of respondeat superior, when he is doing something in furtherance of duties he owes to his employer and where employer is, or could be, exercising some control, directly or indirectly, over employee's activities. Employee is in "scope of employment," such that corporate employer is liable to third party for his torts, whenever he is engaged in activities that fairly and reasonably may be said to be incident of the employment or logically and naturally connected with it.

Statute - An act of the legislature declaring, commanding, or prohibiting something; a particular law enacted and established by the will of the legislative department of government; the written will of the legislature, solemnly expressed according to the forms necessary to constitute it the law of the state. Such may be public or private, declaratory, mandatory, directory, or enabling, in nature. Depending upon its context in usage, a statute may mean a single act of a legislature or a body of acts which are collected and arranged according to a scheme or for a session of a legislature or parliament. This word is used to designate the legislatively created laws in contradistinction to court decided or unwritten laws.

Tort - A private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy in the form of an action for damages. A violation of a duty imposed by general law or otherwise upon all persons occupying the relation to each other which is involved in a given transaction. There must always be a violation of some duty owing to plaintiff, and generally such duty must arise by operation of law and not by mere agreement of the parties. Three elements of every tort action are: Existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result. A legal wrong committed upon the person or property independent of contract. It may be either (1) a direct invasion of some legal right of the individual, (2) the infraction of some public duty by which special damage accrues to the individual, (3) the violation of some private obligation by which like damage accrues to the individual.

Wilful, Wanton, or Reckless Negligence - These terms are customarily treated as meaning essentially the same thing. The usual meaning assigned to "wilful," "wanton" or "reckless," according to taste as to the word used, is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow; and it has been said that this is indispensable. The result is that "wilful," "wanton", or "reckless" conduct tends to take on the aspect of highly unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. As a result there is often no clear distinction at all between such conduct and "gross" negligence and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care. It is at least clear, however, that such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention. "Wantonness" constituting gross and wanton negligence within automobile guest statute indicates a realization of imminence of danger and a reckless disregard, complete indifference, and unconcern of probable consequences of the wrongful act.

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